IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1203 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1203 of 2003

MR JC SHETH for Petitioner No. 1-2

MR UDAY BHATT, AGP, for Respondent No. 1

MR MANAV A MEHTA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The petitioners are the Union of India and the Divisional Railway Manager (Works)(A/C), Western Railway, Pratapnagar, Vadodara. They have challenged, in this petition, the impugned Notice dated 18.12.2002 as well as the demand Notice dated 22.10.2002 (Annexure : A) demanding their previous house tax and current house tax from the petitioners.

2. The respondent No.2 Bharuch Nagarpalika issued impugned Notice dated 22.10.2002 (Annexure : A) calling upon the petitioner to pay previous dues of house tax and current house tax totalling Rs.67,132/- within 7 days from the receipt thereof, failing which they were threatened with disconnection of water supply. Reply dated 5.12.2002 was submitted by the petitioners to the respondent No.2 - Nagar Palika stating that there being a Central Government properties exempted from payment of all the taxes imposed by the State or by any other Authority within the State and by virtue of provision of Section 184 of the Indian Railway Act, 1981, exemption has been continued u/s.285(1) of the Constitution of India, therefore, Notice be discharged.

3. Inspite of the aforesaid reply the respondent No.2 Nagar Palika threatened the petitioner with cutting of the water connection of the petitioner by Notice dated 17/18.12.2002. Hence, this petition.

4. On the basis of Reply dated 5.12.2002, submitted by the petitioner to the respondent No.2, learned Counsel Shri J.C.Sheth for the petitioner submitted that the petitioner's property have been exempted from all the taxes in force by the State or any other Authority within the State under the provision of Article 285 (1) of the Constitution. Therefore, the impugned notice issued by the Municipality be quashed and set aside. However, learned Counsel Shri Manav Mehta, appearing for the respondent No.2 Municipality, submitted that the case of the petitioner does not fall under Article 285(1) of the Constitution and their case falls under the provision of Article 285(2) of the Constitution, which starts with non-obstant clause.

5. Before appreciating the rival contentions raised by the learned Counsel for the parties, we would like to reproduce both the provisions of Article 285(1) & (2) of the Constitution, which are as under :

> 285. Exemption of property of the Union from State taxation - (1) The property of the Union shall, save in so far as Parliament may by law

otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

6. From the above, it is very clear that the property of the Union is exempted from all the Taxes by the State or the Authority under the State. It includes all the Municipalities, including the respondent No.2 Municipality. There is nothing on record to show that immediately before the commencement of the Constitution of India the petitioner was paying the property tax to the respondent - Municipality. In that view of the matter, the provision of Article 285(2) of the Constitution would not be of any help to the Municipality, as tried to be submitted by Shri Mehta, learned Advocate for the respondent No.2.

7. On the facts of this case it is clear that the case of the petitioner falls clearly under the provisions of Article 285(1) of the Constitution, therefore, this petition is required to be allowed.

8. Accordingly, this petition is allowed and the impugned Notice dated 22.10.2002 (Annexure : A) and 17/18.12.2002, issued by the respondent No.2 are hereby quashed and set aside. Rule is made absolute. However, there shall be no order as to costs.

(B.J.Shethna, J.)

Date : September 30, 2004

(Sharad D.Dave, J.)

sas